

Glesby Wholesale, Inc. and Teamsters Local 85, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 20-RC-15224

October 21, 1981

DECISION AND ORDER REMANDING

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On March 26, 1981, the Acting Regional Director for Region 20 issued a Report on Objections wherein he found that the Employer had failed to comply with the requirement in Section 102.69 of the Board's Rules and Regulations that it immediately serve on the other party a copy of its objections and that it make a statement of such service. The Acting Regional Director further found that the Employer had offered no valid and compelling reason for its failure to comply with the requirement for immediate service and, accordingly, he recommended that the Employer's objections be dismissed and that an appropriate certification be issued. Thereafter, the Employer timely filed with the Board exceptions to the Acting Regional Director's report wherein it contends, *inter alia*, that the Acting Regional Director erred in failing to find that the Employer made "an honest attempt to substantially comply" with the requirements of the Board's Rules and Regulations and, therefore, he erred in failing to consider the merits of its objections. For the reasons stated below, we find merit in the Employer's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its brief in support of its exceptions, the Employer concedes that it failed to attach a "Proof of Service" form to the objections it filed, but it asserts that such failure was due to "clerical inadvertence." In this regard, the Employer contends that, at the time its objections were prepared and signed, a proof of service form was also prepared, signed, and attached to said objections, and that, at the time its objections were filed with Region 20, it maintained a good-faith belief that such proof of service form continued to be attached to its objections and that a copy of its objections was immediately served on the Petitioner in accordance with California law. In support of the latter contention, the Employer refers to the transmittal letter accompanying its objections which states, *inter alia*, "A copy of these Objections has today been served on the Petitioner as is more fully set forth in the

attached Proof of Service." As further evidence of its good faith herein, the Employer correctly asserts that, upon learning of its failure to comply with the service requirements of Section 102.69, it immediately sought to rectify its error by serving, the next day, a copy of its objections on the Petitioner and a new proof of service with Region 20.

In agreement with the Employer, we conclude that the foregoing facts establish that the Employer has made "an honest attempt to substantially comply" with the Board's rules on service of objections. See, generally, *Alfred Nickles Bakery, Inc.*, 209 NLRB 1058, 1059 (1974). In this regard, we conclude that both the transmittal letter which accompanied the objections as well as the speed with which the Employer sought to perfect service upon being notified of its deficiencies indicate that its failure to comply with the service requirements of Section 102.69 was due to clerical inadvertence rather than a disregard of the Board's requirements. Cf. *The Nestle Company*, 240 NLRB 1310, 1311 (1979); see also *High Standard, Inc.*, 252 NLRB 403, 405 (1980); and *Alleghany Warehouse Company, Inc., and Star Warehouse Corporation*, 256 NLRB No. 9 (1981). Accordingly, we will remand this matter to the Regional Director for investigation of the Employer's objections and any further action deemed appropriate.

ORDER

It is hereby ordered that this proceeding be, and it hereby is, remanded to the Regional Director for Region 20 for investigation of the Employer's objections and any further action deemed appropriate.

MEMBER JENKINS, dissenting:

I cannot agree with my colleagues' conclusion that the facts herein establish that the Employer has made "an honest attempt to substantially comply" with the requirements of Section 102.69 of the Board's Rules and Regulations. To the contrary, the Employer admittedly was aware of the requirements of Section 102.69, yet was not sufficiently concerned with the same to prevent such "clerical inadvertence" as occurred herein. In my opinion, this lack of concern clearly demonstrates a disregard of our requirements rather than an "honest attempt" to substantially comply therewith.

Since the Employer has established neither an "honest attempt to substantially comply" with our requirements nor a "valid and compelling reason" for its noncompliance, I would dismiss the objections and issue the appropriate certification. See, e.g., *Platt Brothers*, 250 NLRB 325 (1980). This my colleagues refuse to do; accordingly, I dissent.